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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1327

LAKE COUNTRY ESTATES, INC., a corporation,
COUNTRY CLUB ESTATES, a partnership, and
BOULDIN DEVELOPMENT CORPORATION, a corporation,
Petitioners,

v.

TAHOE REGIONAL PLANNING AGENCY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Respondent State of California

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OPINIONS BELOW

The opinions of the lower courts are adequately referenced in the brief for the petitioners.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Brief for the Petitioners.

QUESTIONS PRESENTED

1. Does the Tahoe Regional Planning Compact, which creates the Tahoe Regional Planning Agency (hereafter TRPA) and which defines that agency as a separate legal entity and political subdivision of California and Nevada

and provides for funding from the counties in the Lake Tahoe Basin and provides for less than a majority of the members to be appointed by the respective states and which does not give either state veto authority over the actions of the agency, accord to the TRPA the status of being the alter-ego of the two compacting states, thereby entitled to the protection of the Eleventh Amendment?

2. Even if the TRPA is an Eleventh Amendment agency, does the Tahoe Regional Planning Compact waive the Eleventh Amendment when that compact does not in any reasonable manner indicate that the states or Congress intended a waiver and when the one reference to federal courts (article VI(b)) has several reasonable meanings which do not result in a waiver?

STATUTES INVOLVED

The Brief for the Petitioners adequately references the pertinent statutes.

STATEMENT OF THE CASE

TRPA was created following Congressional ratification of the proposed Tahoe Regional Planning Compact between the states of California and Nevada. Public Law 91-148, 83 Stat. 360; California Government Code section 66801. The compact invested the TRPA with jurisdiction over the watershed of the Lake Tahoe Basin, portions of which are located in both states. Article II(a). To paraphrase the California Supreme Court, the basic concept of the compact is to provide for the planning, conservation and resource development of the region in order to accommodate a growing population within a relatively small area without destroying the environment. *People ex rel Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 487.

Pursuant to article V(b) the TRPA adopted a Plan and pursuant to article VI(a) it also adopted an implementing Land Use Ordinance. The adoption of these measures is alleged in petitioners' first amended complaint. Appendix at pp. 9 and 13. Petitioners' complaint, while setting forth many claims, generally alleges that the actions of defendants have taken petitioners' property without due process of law and without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioners filed the instant litigation on April 16, 1973, in the United States District Court for the Eastern District of California against TRPA, El Dorado County, the states of California and Nevada, the then members of TRPA's Governing Body and the then executive officer of the TRPA. Appendix at p. 1. The proceedings in the lower courts are accurately set forth in "Disposition Below" at p. 7 of Brief of Certain Respondents in Opposition to Petition.

As noted above, California was a named party in this action but California has never been served. However, the state was named and served in two of the other cases which were included in the consolidated opinion of the 9th Circuit Court of Appeals. Those two cases are *Jones v. Tahoe Regional Planning Agency* (United States Court of Appeals for the 9th Circuit No. 76-1182) and *Layton-Tahoe Properties v. Tahoe Regional Planning Agency* (United States Court of Appeals for the 9th Circuit No. 76-1608).

The portions of the compact relevant to the state's argument are discussed in detail in the body of this brief.

SUMMARY OF ARGUMENT

A close review of the pertinent provisions of the Tahoe Regional Planning Compact makes it clear that the TRPA is not a creature of the state and is not entitled to the

protection of the Eleventh Amendment. Additionally, the lack of state control over the TRPA thoroughly distinguishes the cases where virtual plenary state control of compact agencies resulted in holdings according those agencies Eleventh Amendment status. *Petty v. Tennessee-Missouri Bridge Comm'n.* (8th Cir. 1958) 254 F.2d 857, reversed on other grounds in *Petty v. Tennessee-Missouri Bridge Comm'n.* (1959) 359 U.S. 275 and *Trotman v. Palisades Interstate Park Comm'n.* (2d Cir. 1977) 557 F.2d 35.

Even if the TRPA is properly accorded Eleventh Amendment status, there is no reasonable indication in the Tahoe Regional Planning Compact that the states waived the Eleventh Amendment. The passing reference in article VI (b) to actions in federal court is not analogous to the sue and be sued clause involved in the compact before this court in *Petty v. Tennessee-Missouri Bridge Comm'n.* (1959) 359 U.S. 275 (wherein a waiver was found). Moreover, the thrust of article VI(b) is to confer state court jurisdiction over actions to which TRPA is a party and to place venue for the same. The reference to federal court actions is merely an acknowledgement of certain limited circumstances where TRPA may be a party in federal litigation (as where TRPA makes a general appearance thus waiving any Eleventh Amendment immunity). Applying the test that a waiver must be express or implied by such overwhelming implication as will leave room for no other reasonable construction, there is no waiver in the Tahoe Regional Planning Compact. *Edelman v. Jordan* (1973) 415 U.S. 651, 673.

ARGUMENT

I. THE TAHOE REGIONAL PLANNING AGENCY IS NOT AN ARM OF THE STATE ENTITLED TO ELEVENTH AMENDMENT IMMUNITY.

A. It Is Clear from the Compact That the Tahoe Regional Planning Agency Is Not a Part of the State.

Below we shall point to various provisions of the compact which make it clear that the TRPA is not an arm of the State of California.

Article III(a), in the context of setting forth the agency's organization, defines the TRPA as a "separate legal entity". This is not language which operates to create state agencies.

Article VI(a), in the course of establishing the agency's powers, defines the agency as a "political subdivision" of both states for litigation purposes. The creation of a political subdivision is not the creation of an agency of the state. This is clear under California law which excludes a political subdivision from being a part of the state for purposes of liability. California Government Code section 940.4 provides as follows:

> " 'Local public entity' includes a county, city, district, public authority, public agency, and any other *political subdivision* or public corporation in the State, *but does not include the State.*" (emphasis added)[1]

Article III(a) sets up the membership of the Governing Body of TRPA. There are ten members with five from each state. The State of California has two representatives, an appointee of the Governor and a state official (the Administrator of the Resources Agency). The other three members of the California delegation are selected by Placer and El

1. The state is defined in California Government Code § 940.6 as including any officer or agency, etc., claims against which are paid by the State Controller.

Dorado Counties and the City of South Lake Tahoe, all local governmental agencies which are not a part of the state. See California Government Code § 940.4, *supra*. It is immediately apparent that the State of California does not command even a majority of the California delegation. As will be discussed below, this lack of state control is in sharp contrast to the power of a state governor to veto an action taken by a compact agency as in *Petty v. Tennessee-Missouri Bridge Comm'n.* (8th Cir. 1958) 254 F.2d 857.

To place this point in context, the State of California has on occasion been sufficiently dissatisfied with TRPA to bring suit against it. For example, in *People of St. of Cal. ex rel Younger v. Tahoe Reg. P. Ag.* (9th Cir. 1975) 516 F.2d 215, the court construed article III(g) and article VI(k) of the Tahoe Regional Planning Compact to mean that where the delegations of the two states fail to agree on a development proposal, the proposal is approved sixty days following submission. In that case, the California delegation (including the local representatives) had voted 5 to 0 against the projects and the Nevada delegation had voted 3 to 2 in favor of the projects. The net result, of course, was that California lost the litigation. It would be paradoxical in the extreme to accord TRPA the status of being an arm of the state when the state simply cannot control the actions or inactions of the agency.

Continuing our review of compact provisions, article VII(f) provides as follows:

> "The agency shall not obligate itself beyond the monies due under this article for its support from the several counties for the current fiscal year, plus any monies on hand or irrevocably pledged to its support from other sources. *No obligation contracted by the agency shall bind either of the party states or any political subdivision thereof.*" (emphasis added)

A more clear expression by the states of their intent not to have obligations of the agency imposed as obligations of their respective treasuries is hard to imagine.

Finally, the main body of article VII sets up the funding mechanism for TRPA and provides that the agency may mandate up to $150,000 of funding from the counties in the Lake Tahoe Basin. See generally *People ex rel Younger v. County of El Dorado, supra,* and *State of Nevada ex rel List v. County of Douglas* (1974) 524 P.2d 1271. It is noteworthy that the compact does not anticipate that the states will fund the TRPA in the same manner as they would fund their own agencies such as the Department of Motor Vehicles, etc.[2]

B. The Relevant Cases Indicate That the Tahoe Regional Planning Agency Is Not an Arm of the States.

There are two major opinions from the circuit courts that have set forth the factors which determine the Eleventh Amendment status of compact agencies. One is the 8th Circuit decision in *Petty, supra,* and the other is *Trotman v. Palisades Interstate Park Comm'n.* (2d Cir. 1977) 557 F.2d 35. A close analysis of both cases reveals that the factors employed to determine that the compact agencies created in those cases were arms of the state are not present here.

The relevant discussion in the 8th Circuit decision in *Petty* follows:

> "In our present case, it is apparent that the purpose of the States in entering into the compact and in carrying out the authorized activity was to perform their respective governmental obligations to furnish

2. The states have given money to TRPA to aid it in carrying out its functions. However, nothing in the compact imposes such an obligation.

the public with necessary highways and bridges. The defendant Commission was the agency or instrument of the two States and not an entity separate and apart from the States. The Commission could issue no stock. It was controlled by state officials appointed by the respective governors with senate confirmation. Commission action could be authorized only upon a majority vote of the commissioners from each State. Veto power was reserved to the governors. The Commission's authorized bonds were granted exemption from income taxation. Its revenue from tolls could only be used for reasonable operating expenses and for payment of its bonds and interest, and when the indebtedness was paid the bridge was to belong to the two States and to be operated free of tolls. The Commission afforded no opportunity for realization of private profits to anyone. It had no right to levy taxes. Its tolls were pledged exclusively for operating expenses and bond payments. Aside from the tolls, its only sources of money were the creating States and the Federal Government. It is apparent that a judgment against the Commission and a seizure of the ferry would adversely affect the participating States in the performance of their duty of providing a means of crossing the river." id. pp. 859-60

We will examine this "sentence for sentence" and compare it to the instant case.

The first sentence indicates that the purpose of the compact in *Petty* was to perform governmental obligations to provide public transportation. It is questionable whether this has any bearing on whether a state agency has been created. Regardless, in the instant case there is no governmental obligation to form a compact to deal with the environmental problems at Lake Tahoe. Rather, the decision was made in the discretion of the two states to form a regulatory body in an attempt to deal with those problems.

The second sentence, concluding that the agency in *Petty* was an instrument of the two states, is not an analytical statement but merely a statement of the conclusion. The third sentence regarding the lack of power to issue stock is also the case with TRPA but is seemingly of little relevance.

The fourth sentence regarding control by state officials is important. As we have previously pointed out, California (and Nevada) appoint only two representatives on the TRPA out of a delegation of five members from each state. It is thus clear that TRPA is not state controlled as was the *Petty* agency.

The fifth sentence, dealing with commission action only when a majority vote of the commissioners from each state occurs, is also critical since that factor is missing here. In *People ex rel Younger v. Tahoe Reg. P. Ag., supra,* the court held in effect that where California (or for that matter Nevada) votes against a proposal, it can proceed anyway if supported by the other state's delegation.

The sixth sentence reserving veto powers to the governor is extraordinarily important because, again, this is not the case with the instant compact. Nowhere does the Tahoe Regional Planning Compact reserve such authority to the governors or the legislatures of the respective states.

The seventh sentence is irrelevant to TRPA which has no authority or occasion to issue bonds.

The eighth sentence regarding the use of revenues and the incidence of title in the state is relevant, again, by its absence here. Neither of the compacting states end up as owners of any of the fees or property of the TRPA.

The ninth sentence regarding the realization of profit is not relevant to the TRPA.

The tenth sentence regarding the levy of taxes is relevant since TRPA may levy a "tax" to the extent of $150,000 per year. See, article VII.

The eleventh sentence is merely a statement of the conclusion.

The stark contrast between the *Petty* compact, where the compacting states had virtually plenary control over the agency, and the TRPA, where the compacting states have little control, is apparent.

The reserved state control in the compact involved in the *Trotman* case was at least as plenary as in the *Petty* compact. As with *Petty,* the contrast between the *Trotman* compact and the Tahoe Regional Planning Compact points to the conclusion that the TRPA is not an arm of the compacting states.

Thus, in *Trotman* it was provided that the commission's members were to be appointed by the governors of both states; the agency was deemed to be performing governmental functions of the two states; each state had the power to unilaterally modify the functions and powers of the commission with respect to park lands lying within the particular state; the compact provided that members of the commission and its employees would be considered officers and employees of the state where a tort was committed and that liability would be governed by the laws of the state where the tort was committed. There are no remotely equivalent provisions in the TRPA compact.

The *Trotman* court indicated that the most significant factor in determining whether the Eleventh Amendment is a bar to federal suit is whether liability against the agency must be satisfied from a state treasury. The court's analysis (*Id.* at p. 38) notes that the compact calls for appropriations from the states as a source of revenue. Article VII of the instant compact provides TRPA with funding authority

from the counties in the Lake Tahoe Basin. There is no provision requiring appropriations from the states and in fact the states have disclaimed financial responsibility for the TRPA. Article VII(f).[3]

The Tahoe Regional Planning Compact creates an agency free from the plenary control of the compacting states. This conclusion is evident not only from a review of the compact but by comparison of the compact with the *Petty* and *Trotman* cases. Therefore, in complete contrast to those cases, it is apparent that the TRPA is not an entity of the states and a judgment against TRPA would not be satisfied from the states' treasuries. TRPA may not assert the Eleventh Amendment as a bar to suit in federal courts.

II. IF THE COMPACT ACCORDS THE TAHOE REGIONAL PLANNING AGENCY ELEVENTH AMENDMENT STATUS, THE STATES HAVE NOT WAIVED THEIR ELEVENTH AMENDMENT IMMUNITY.

A. California's Interest.

Petitioners argue that the states have waived the Eleventh Amendment immunity which might otherwise be available to the TRPA. Yet, petitioners also argue that a judgment against TRPA cannot be an obligation of the state treasury. Brief for the Petitioners at p. 20. California has difficulty squaring petitioners' argument with the well-established constitutional rule that Eleventh Amendment immunity is only available where the action is in effect against a state, and where damages are sought, a judgment would ultimately be payable from a state treasury. *Edelman v. Jordan* (1973) 415 U.S. 651, 663; *Trotman v. Palisades Interstate Park*

3. The *Trotman* court observed that whatever fees were collected for use in the New York segment of the park had to be turned over to the New York treasury. There is no such provision in the TRPA compact.

Commission, supra, at p. 38. Thus, while petitioners profess to have no interest adverse to California (see Brief for Petitioners at p. 4 (fn. 3) and p. 7 (fn. 6)), it appears under established concepts that a holding by this court that the compact waives the Eleventh Amendment could leave the state treasury vulnerable should TRPA ever incur monetary liability imposed by federal court judgment.

It is perhaps conceivable that this court could find the compact to have waived the Eleventh Amendment as to the TRPA in a manner that would not operate as a waiver as to the states.[4] This, however, would involve a new constitutional rule seemingly without support from the underlying purpose of the Eleventh Amendment.[5]

It is for these reasons that although petitioners' Eleventh Amendment waiver arguments are not persuasive, California nevertheless is compelled to address them.[6]

B. Assuming the Eleventh Amendment Is Available to the Tahoe Regional Planning Agency, the Tahoe Regional Planning Compact Does Not Waive the Eleventh Amendment.

The law governing determination of Eleventh Amendment waivers has been clearly stated by this court:

> "... We will find waiver only where stated 'by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction.'" *Edelman, supra,* at p. 673.[7]

4. Of course, as we have argued, *supra,* at I, California does not regard the TRPA as an arm of the state which should be accorded any form of Eleventh Amendment status whatsoever.

5. This has been impliedly recognized by TRPA. See Brief of Certain Respondents in Opposition to Petition at p. 20 (fn. 10).

6. The Court of Appeals rejected petitioners' contention in this regard observing it to be "somewhat contrived". *Jacobson v. Tahoe Regional Planning Agcy.* (9th Cir. 1977) 566 F.2d 1353, 1362. We agree.

That this is the governing principle is not in dispute. See Petition for Writ of Certiorari at p. 24 and Brief for the Petitioners at p. 25. The strong showing imposed upon one who would argue that an Eleventh Amendment waiver has occurred is undoubtedly intended to ensure a correct determination, on a case by case basis, of the underlying question of whether a state has intended to waive its immunity. See *Petty v. Tennessee-Missouri Comm'n.* (1958) 359 U.S. 275, 278. We shall show that this test cannot be met.

Petitioners rely on article VI(b). It provides:

> "All ordinances, rules, regulations and policies adopted by the agency shall be enforced by the agency and by the respective states, counties, and cities. The appropriate courts of the respective states, each within its limits of territory and subject matter provided by state law, are vested with jurisdiction over civil actions as to which the agency is a party and criminal actions for violations of its ordinances. Each such action shall be brought in a court of the state where the violation is committed or where the property affected by a civil action is situated, *unless the action is brought in a federal court.* For this purpose, the agency shall be deemed a political subdivision of both the State of California and the State of Nevada." (emphasis added)

The passive reference to the federal courts cannot be considered a waiver of the Eleventh Amendment and consent to federal jurisdiction by the compacting states. Such a waiver has been implied from a sue and be sued clause. *Petty, supra.* But such a clause is a much more direct implication of consent to suit than the indirect federal court

7. See *Great Northern Life Insurance Co. v. Reid* (1944) 322 U.S. 47, 54.

reference in the instant case. Furthermore, while *Petty* found the consent to extend to suits in federal courts, the court in *Trotman* concluded otherwise:

> "Consequently we do not construe the sue-and-be-sued clause to extend the consent of the states to be sued in the state courts, to a waiver of the states' Eleventh Amendment immunity in the federal courts simply because Congress has approved the compact." *Id.* p. 40.

A close analysis of article VI(b) reveals that it is directed toward authorizing and requiring enforcement activities coupled with vesting the courts of the respective states with jurisdiction over actions to which TRPA is a party. Thus, the first sentence of the article mandates that the agency's ordinances, etc., will be enforced by the named entities. The second and third sentences grant jurisdiction to the courts of California and Nevada over actions to which the agency is a party; those two sentences also place venue where the violation was committed or where the property affected is located. Of course, the third sentence contains the reference to federal courts which we shall demonstrate acknowledges limited federal jurisdiction. The fourth and final sentence of the article designates the agency as a political subdivision of both states; we shall show that this acknowledges TRPA's amenability to diversity jurisdiction in federal courts and also makes it clear that TRPA is a public entity of the two compacting states.[8]

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8. Since article III(a) defines TRPA as merely a "separate legal entity" the last sentence of article VI(b) is significant in according TRPA public entity status such that it is governed by the requirements applicable to public agencies in litigation. For example, under California Code of Civil Procedure section 1058, virtually any public entity of the state or the federal government is exempt from a bond requirement which might otherwise be imposed on a private party.

The clause in the third sentence of article VI(b) referring to a federal court is not a subliminal waiver of the Eleventh Amendment; rather, it serves at least two purposes: The clause is an acknowledgement that in some circumstances an action involving the TRPA may be brought in federal court. For example, the TRPA may commence action in federal court which would operate as a waiver of any Eleventh Amendment immunity by the making of a general appearance. *Clark v. Barnard* (1883) 108 U.S. 436, 447-8; *Petty, supra,* at p. 276. Furthermore, the clause, coupled with the fourth sentence of the article defining TRPA as a political subdivision of both states, acknowledges the possibility of diversity jurisdiction in an action involving TRPA. 42 U.S.C. § 1332. In *Moor v. County of Alameda, supra,* this court held that California counties are sufficiently independent of the state to constitute citizens for purposes of diversity. In so holding, this court relied in part on *People ex rel Younger v. County of El Dorado, supra,* a decision by the California Supreme Court which determined the status of counties for purposes of issuance of a writ of mandate. If a county is not part of the state for diversity purposes, then a separate legal entity and political subdivision (which TRPA is defined to be) is also separate from the state. It would thus appear that TRPA is a "citizen" for diversity purposes.

Since this analysis sets forth the most reasonable and likely meaning of article VI(b), including the clause referring to federal court actions, it is apparent that there is nothing in the article which constitutes an express waiver of Eleventh Amendment immunity or creates such a waiver

by overwhelming implication from the lack of any other reasonable construction.[9]

Petitioners point to section 5 of the compact which was added by Congress. That section does contain a general reservation regarding the applicability of any law or regulation of the United States in the area. This language merely saves the applicability of federal laws or regulations that would otherwise be enforceable. The section makes no mention of federal court jurisdiction, a factor which the *Petty* court considered significant in establishing that a sue and be sued clause had been accepted by the compacting states under circumstances that:

> "make it clear that the States accepting it waived any immunity from suits which they otherwise might have." *Petty, supra,* at p. 280.

No such knowing waiver can be implied here. The reservation in section 5 of the compact before the court adds nothing to petitioners' argument, certainly in the absence of express state consent to be sued via a sue and be sued clause.[10]

In summary, a fair reading of the entire compact reveals no express or implied waiver. The passive reference to federal courts in article VI(b) is not analogous to a sue

9. Of even greater significance in demonstrating the states' express intent not to waive the Eleventh Amendment is article VII(f) (quoted, *supra,* at p. 6). A more clear statement by the compacting states of their intention not to waive Eleventh Amendment immunities would be hard to imagine.

10. Justice Frankfurter's dissent in *Petty* points out that various forms of federal reservations have appeared in numerous compacts. He ascribed little significance to the variation in wording among them. Whether his view is correct or not, the crux of this case is the lack of clear language in the body of the compact indicating any state intent whatsoever to waive Eleventh Amendment immunities.

and be sued clause as involved in *Petty.* This court's language in *Edelman* distinguishing *Petty* is equally applicable to this case.[11]

> "Similarly, *Petty v. Tennessee-Missouri Bridge Comm'n, supra,* involved congressional approval, pursuant to the Compact Clause, of a compact between Tennessee and Missouri, which provided that each compacting State would have the power 'to contract, to sue, and be sued in its own name.' *The question of waiver or consent under the Eleventh Amendment was found in those cases to turn on whether Congress had intended to abrogate the immunity in question, and whether the State by its participation in the program authorized by Congress had in effect consented to the abrogation of that immunity.*
>
> *"But in this case the threshold fact of congressional authorization to sue a class of defendants which literally includes States is wholly absent.* Thus respondent is not only precluded from relying on this Court's holding in *Employees,* but on this Court's holdings in *Parden* and *Petty* as well." *Id.* p. 672. (Emphasis added).

C. Petitioner's Arguments Are Not Persuasive.

At pages 24-25 of the Brief for the Petitioners it is suggested that those provisions of the compact which indicate that Eleventh Amendment immunities are not available to TRPA constitute at least an indication of waiver of any

11. Further distinguishing *Petty* is the fact that it involved an agency operating in a "business field" (*Petty, supra,* at p. 280). The *Petty* court relied on two opinions involving California agencies operating in an enterprise capacity (*United States v. California* (1935) 297 U.S. 175; *California v. Taylor* (1956) 353 U.S. 553) to bolster the conclusion that states operating business enterprises should not be exempt from federal requirements. There is no similar circumstance in this case where California and Nevada have joined together to form a regulatory body for the purpose of protecting Lake Tahoe's environment. It is apparent that the TRPA serves a purely governmental purpose.

Eleventh Amendment immunity as to TRPA. We have agreed with petitioners, *supra,* at I, that the compacting states and Congress did not provide for the TRPA to be an agency of California and Nevada. However, to argue that the absence of Eleventh Amendment status somehow connotes a waiver of Eleventh Amendment immunity does not follow. Certainly the states, which did not intend TRPA to have any Eleventh Amendment status, could hardly be considered to have agreed to a waiver of an immunity not intended to be conferred. Secondly, as we have indicated previously, the premise of Eleventh Amendment immunity is to shield states from suits in federal court. If TRPA is not an arm of the state, there is no separate category of Eleventh Amendment waiver as to a non-state entity.

Finally, petitioners argue the need for federal court jurisdiction to avoid conflicting results between the courts of the compacting states. This concern is more hypothetical than real since we are unaware of any occasion when the courts of the two states have rendered conflicting rulings on matters affecting TRPA or parties dealing with TRPA. Furthermore, the 9th Circuit Court of Appeals has held on several occasions that the compact presents questions of federal law. *Jacobson v. Tahoe Regional Planning Agcy.* (9th Cir. 1977) 566 F.2d 1353, 1358; *League to Save Lake Tahoe v. B.J.K. Corp.* (9th Cir. 1977) 540 F.2d 1072; *League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (1974) 507 F.2d 517. The 9th Circuit Court of Appeals opinion in *Jacobson, supra,* also held that an action would lie against the governing body members of TRPA to determine the validity of certain regulatory actions taken. *Jacobson, supra,* at p. 1360. Since issues involving interpretation of the compact are susceptible to federal jurisdiction as presenting federal questions and since the Governing Body

members can be appropriate defendants, the potential for conflicting results seems small indeed.

CONCLUSION

For the foregoing reasons California respectfully submits that the TRPA is not an alter ego of the state entitled to the shield of the Eleventh Amendment. Furthermore, even if California is in error on this point, the compact does not waive the state's Eleventh Amendment immunity.

Dated: October 4, 1978

Respectfully submitted,

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